

Lease agreements that contain purchase options that are equal to the fair market value of the tangible personal property at the end of the lease term are considered true leases, and the lessors incur Use Tax liability on their cost price of tangible personal property purchased for rental purposes. See 86 Ill. Adm. Code 130.2010. (This is a GIL).

October 5, 2000

Dear Xxxxx:

This letter is in response to the letter dated July 25, 2000 that was addressed to Director Glen Bower. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed on the Department's Web site at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

As you may know, STATE has a general statewide sales and compensating use tax. In addition, local taxing jurisdictions (e.g., cities and counties) are authorized to impose a sales and use tax. The STATE Sales and Use Tax Law grants a credit against STATE's compensating use tax for sales or use taxes paid to other states or their local jurisdictions provided that the other state or locality reciprocally grants a similar credit for payment of STATE's sales or use tax (Tax Law Section 1118[7]). This credit, however, is conditioned upon the other state or jurisdiction within the other state reciprocally granting credit both for STATE's sales or use tax and for any local sales or use tax imposed by its localities (Tax Law Section 1235). Copies of both Tax Law sections are enclosed.

We are updating our information on states with which STATE practices reciprocity for sales and compensating use tax, and would appreciate your assistance. Please complete the attached questionnaire and return to us by mail or fax by September 1, 2000.

Your assistance and cooperation in providing this information is greatly appreciated. If you have any questions, please contact PERSON.

Your questionnaire states as follows:

Since credit for sales or use taxes paid to other states is premised on reciprocity, would you please advise us as to the following:

1. *If there is a statewide sales and use tax in your state:
 - a) Will your state grant a credit against such tax for sales or use tax paid to STATE?
 - b) Will your state grant credit against its statewide tax for sales or use taxes imposed by localities of STATE?

*If your state does not have a sales or use tax, or, if your state does not grant reciprocity, skip to question #13
2. If there are local jurisdictions within your state which impose sales and use taxes:
 - a) Will such localities grant a credit for payment of the STATE Sales & Use Tax?
 - b) Will such localities grant a credit for a local sales or use tax paid to one of STATE's localities?

In answering questions 3 – 6 assume the transactions do not involve motor vehicles. (Motor vehicles are addressed in questions 7-12)

3. Is your state's sales and/or use tax law based on point of delivery?
4. Do special rules apply to rentals or leases of tangible personal property in your state?

If yes, please explain.
5. Under what circumstances does your state issue refunds or credits of its sales and/or use tax on tangible personal property purchased in your state and subsequently removed from your state? Please indicate if such refunds are applicable to local taxes.

For example, STATE Law, among other provisions, allows for refunds of state and local taxes:

(a) to construction contractors for sales tax paid on building materials purchased in STATE if the contractor later incorporates those materials into realty located outside the state; and

(b) for taxes paid on property purchased in bulk quantities, stored but not otherwise used in STATE, and then removed from storage for use outside the state.

6. A taxpayer in your state collects your state's sales and/or use tax on a repair of tangible personal property (materials and labor were taxed) performed in your state but shipped to a customer in STATE. Is there a refund or credit allowed for your state's sales and/or use tax paid by the STATE customer?

In answering questions 7 – 12, assume the transactions involve only motor vehicles. (For purposes of these questions a motor vehicle includes automobiles, motorcycles, RVs, busses, trucks, tractors, trailers and semi-trailers but does not include bicycles, vessels, personal watercraft, snowmobiles, and ATVs.).

7. If there is a statewide sales and use tax applicable to motor vehicles in your state:
 - a) Will your state grant a credit against such tax for sales or use tax paid to STATE?
 - b) Will your state grant credit against its statewide tax for sales or use taxes imposed by localities of STATE?
8. If there are local jurisdictions within your state which impose sales and use taxes on motor vehicles:
 - a) Will such localities grant a credit for payment of the STATE Sales and Use Tax?
 - b) Will such localities grant a credit for payment of a local sales or use tax to one of STATE's localities?
9. If there is no sales tax imposed on motor vehicles in your state, does your state impose a different tax (excise, vehicle use, personal property, etc.) on motor vehicles?

If yes, would your state allow a credit against your tax for STATE and Local Sales Tax paid on that motor vehicles?
10. Do special rules apply to rentals or leases of motor vehicles? *(For example, in STATE special rules are applicable to certain automobile leases for terms of a year or more.)*

If yes, please explain.
11. A) Under what circumstances does your state allow a non-resident to purchase a motor vehicle without payment of tax?

- B) Under what circumstances does your state grant a refund of tax on a motor vehicle purchased by a non-resident?
12. A) Under what circumstances does your state allow a dual-resident to purchase a motor vehicle without payment of tax?
- B) Under what circumstances does your state grant a refund of tax on a motor vehicle purchased by a dual-resident?
13. Who could we contact for additional information concerning your state's sales and use tax provisions? (Please provide an address and phone number).
14. If your agency maintains a web site, please provide the address.

If your state or local sales and use tax law has reciprocal provisions may we have a copy of such provisions?

Once again, we thank you for your assistance and cooperation.

Each of the questions in your reciprocity questionnaire will be answered individually, except Question 9 which is not applicable because Illinois does impose Retailers' Occupation and Use Taxes upon the sale of motor vehicles.

1. Section 3 of the Illinois Use Tax Act (35 ILCS 105/3) imposes a tax upon the privilege of using tangible personal property in Illinois purchased at retail from retailers. The Illinois Use Tax Act, however, provides that in order to prevent actual or likely multistate taxation, the Use Tax does not apply to the use of tangible personal property in this State of tangible personal property that is acquired outside this State and caused to be brought into this State by a person who has already paid a tax in another State in respect to the sale, purchase, or use of that property, to the extent of the amount of the tax properly due and paid in the other State, 35 ILCS 105/3-55(d). See 86 Ill. Adm. Code 150.310(a)(3), enclosed.

2. There are local jurisdictions in Illinois that are authorized to impose local Retailers' Occupation and Use Taxes. The only taxes against which a credit could be applied are local Use Taxes such as the Regional Transportation Authority Use Tax (70 ILCS 3615/4.03), the County Water Commission Use Tax (70 ILCS 3720/4(d)), the Metro East Mass Transit District Use Tax (70 ILCS 3610/5.01(d)), the Non-Home Rule Municipal Use Tax (65 ILCS 5/8-11-1.5) the Home Rule Municipal Use Tax (5/8-11-6), and the Home Rule County Use Tax (55 ILCS 5/5-1008.5). These taxes are generally imposed upon tangible personal property that is titled or registered with an agency of this State's government. The Regional Transportation Authority Use Tax, the County Water Commission Use Tax and the Metro East Mass Transit District Use Tax each contain a provision that incorporates by reference Section 3-55 of the Use Tax Act (35 ILCS 105/3-55). The Home Rule Municipal Use Tax Act contains a provision that allows a credit to a person who brings in tangible personal property and ". . who has already paid a home rule municipal tax in another municipality in respect to the sale,

purchase, or use of that property. . " 65 ILCS 5/8-11-6. Except for the above taxes and the Chicago Home Rule Use Tax for titled items, all other local Use Taxes are administered by the local unit of government. Chicago also has a use tax on non-titled property which it administers itself. You may contact them for more information.

3. No. The tax rate is fixed by the location of the seller, not the delivery location. See the enclosed copy of Sec. 270.115 of the Home Rule Municipal Retailers' Occupation Tax concerning jurisdictional questions. Local taxes are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, the sale will have occurred in that jurisdiction and that tax will be incurred. The fact that the item being sold is shipped from out-of-State is also immaterial for purposes of local taxes. If the sale occurs in an Illinois jurisdiction imposing a local tax, the local tax will be incurred.

4. For general informational purposes we enclose a copy of 86 Ill. Adm. Code 130.2010, the Department's regulation that covers the taxation of leases. Under Illinois law, "true leases" and "leases" that are actually conditional sales contracts are treated differently for Retailers' Occupation and Use Tax purposes. Lessors are subjected to a Use Tax on their cost price or acquisition value of tangible personal property that they use by leasing in Illinois. This means lessors encounter a front-end tax on value rather than an amortized tax on receipts. The only exception is automobiles rented for one year or less which are subject to the Automobile Renting and Use Tax found at 35 ILCS 155/1 et seq.

True leases generally have no buy out provisions at the close of the leases. If buy out provisions do exist, they must be fair market value buy out options in order to maintain the character of the true leases. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See, 86 Ill. Adm. Code 130.220(a). As end users of tangible personal property located in Illinois, lessors incur Use Tax liability on their cost price of such property.

Under Section 130.2010(a), persons who purport to "lease" the use of property, but in fact sell such tangible personal property to nominal "lessees," are considered to be making conditional sales whose total receipts are subject to Retailers' Occupation Tax. Such would be the case when the agreements contain one dollar or other nominal purchase options.

5. Enclosed is a copy of 86 Ill. Adm. Code 130.605 concerning Sales of Property Originating in Illinois. While this regulation covers interstate commerce, please note that sales are not deemed to be in interstate commerce if the purchaser or his representative receives the physical possession of the property in Illinois, even if such property is immediately transported outside of Illinois, 86 Ill. Adm. Code 130.305(a)(1) and (2). This is because Section 3 of the Illinois Use Tax Act, 35 ILCS 105/3, imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. A purchaser who takes delivery and receives the property in Illinois is "using" it for the purpose of the Use Tax. Therefore the fact the purchaser subsequently removes the property from Illinois will not be a reason for Illinois to issue a credit or refund.

6. The repair of tangible personal property in Illinois where repair parts or other tangible personal property is transferred as an incident of the repair service is generally taxable under the Service Occupation Tax Act. See 86 Ill. Adm. Code 140.101 and 140.140(I), enclosed. However, the serviceman would not incur Service Occupation Tax liability on property he sells as an incident of a sale of service where he is obligated under an agreement to make physical delivery of the goods from a point in this State to a point outside this State, not to be returned to a point within this State, provided such delivery is actually made. See 86 Ill. Adm. Code 140.501(b), enclosed.

7. See the answer to Question 1.

8. See the answer to Question 2.

10. The answer to Question 4 applies subject to the following. When motor vehicles are subject to a "lease" in Illinois that is actually a conditional sale, the tax is due on the total receipts up front when the vehicle is titled at the inception of the lease. Automobiles rented for one year or less are not subject to tax up front but are subject to the Automobile Renting and Use Tax found at 35 ILCS 155/1 et seq.

11. When an Illinois dealer makes a sale of a motor vehicle to a nonresident the dealer does not incur Retailers' Occupation Tax even though such motor vehicle is delivered to such nonresident in this State, if such motor vehicle is not to be titled in this State, and if a driveaway decal permit is issued to such motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code, or if the nonresident purchaser has vehicle registration plates to transfer to the other vehicle upon returning to his home state. See 86 Ill. Adm. Code 130.605(4)(A).

12. See the answer to Question 11.

13. If you have further questions related to the Illinois sales tax laws, you can contact the Department's Taxpayer Information Division at (217) 782-3336, or you can write to:

Taxpayer Information

P. O. Box 19001
Illinois Department of Revenue
101 West Jefferson Street
Springfield, IL 62974-9001.

14. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.